IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1018 of 2005

IN

NOTICE OF MOTION NO. 2130 OF 2005

IN

SUIT NO. 2028 OF 2005

M/s.Sumer Associates .. Appellants

versus

Mr.Kishandas Bhagwandas Nagpal & ors . Respondents

...

Mr.P.K.Samdani a/w Mr.Virendra Tulzapurkar and Mr. Hemant Shah i/b M/s.Kishore Thakordas & Co for the Appellants.

Mr.P.N.Modi a/w Mr.S.J.Musanik, Mr.Rajesh Rathod i/b M/s N.C.Dalal & Co for Respondent nos.1 and 2.

Mr.H.J.Shah i/b Mr.R.Dharmadhikari for Respondent no.5

**CORAM : R.M. LODHA AND**
**D.G. KARNIK, JJ**

**DATED : 28th November 2005.**

P.C.:

Heard the learned counsel for the appellant - original defendant no.13, the learned counsel for the

respondent nos.1 and 2 (original plaintiff nos.1 and 2) and the learned counsel for the respondent no.5 (original defendant no.5).

2. As regards other respondents, we are informed by the learned counsel for the appellant that for the purposes of this appeal they are not required to be heard.

3. Admit. M/s.N.C. Dalal & Co. waives service on behalf of respondent nos.1 and 2. and Mr.H.J. Shah waives service for the respondent no.5.

4. Printing of paper books is dispensed with and by consent of the appearing counsel, appeal is heard finally at this stage.

5. During the course of hearing, the learned counsel for the appellant submitted that the appellant is ready and willing to secure the monetary claim of the respondent nos.1 and 2 (original plaintiffs) concerning the tenancy rights in the partnership property. In the light of Exhibit-S (page nos.156 - 157), the learned counsel for the appellant submitted that the appellant shall deposit a sum of

Rs.91,12,500/- before this Court within four weeks from today.

6. The learned counsel for the respondent nos.1 and 2 - original plaintiffs was not averse to the proposal of the learned counsel for the appellant but submitted that the respondent nos.1 and 2 allowed to withdraw the said amount.

7. Having considered all relevant aspects, we are of the view that appeal may be disposed of by the following order.

i) The appellant shall deposit a sum of Rs.91,12,500/- (Rupees ninety one lakhs twelve thousand five hundred) with the Prothonotary and Senior Master of this Court within four weeks from today.

ii) The respondent nos.1 and 2 shall be at liberty to withdraw the amount of Rs.45,00,000/- (Rupees Forty five lakhs) out of the aforesaid amount without security.

iii) The balance amount of Rs.46,12,500/- (Rupees forty six lakhs twelve thousand five hundred) may be withdrawn by the respondent nos.1 and 2 on furnishing security to the satisfaction of the Prothonotary and Senior Master.

iv) Upon deposit of the amount of Rs.91,12,500/- by the appellant, the interim order of injunction as recorded in paragraph no.3 of the order dated 8th August 2005 shall stand discharged.

v) In case the respondent nos.1 and 2 do not furnish the security for withdrawal of an amount of Rs.46,12,500/- within six weeks from the date of deposit of the amount by the appellant, the Prothonotary & Senior Master shall invest the said amount in the Fixed Deposit of any nationalised bank initially for a period of two years, renewable thereafter for same period each time until disposal of the suit.

Order accordingly.

8. All contentions of the parties are kept open to be agitated in the suit and the interim arrangement as noticed above shall have no bearing on the outcome of the suit.

No costs.

**(R.M. LODHA, J)**

**(D.G. KARNIK, J)**